

Amendment and Response

Serial No.: 10/691,330

Confirmation No.: 1384

Filed: October 22, 2003

For: USE OF COLOSTRININ, CONSTITUENT PEPTIDES THEREOF, AND ANALOGS THEREOF AS
INHIBITORS OF APOPTOSIS AND OTHER CELLULAR DAMAGE

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Remarks

The Office Action mailed March 3, 2008 has been received and reviewed. Claims 1, 6, 12, 27, and 28 having been amended, the pending claims are claims 1-6, 8, 12-15, 27, 28, and 33-38. Reconsideration and withdrawal of the rejections are respectfully requested.

Restriction Requirement

As amended, claims 1-6, 8, 12-15, 27, 28, and 33-38 are drawn to SEQ ID NO:1-34. Applicants submit that, in view of the Examiner's rejection of the methods of claims 1-6, 8, 12-15, 27, 28, and 33-38 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the methods of claims 10-13 and 19-22 of co-pending U.S. Patent Application Serial No. 11/509,979, there is no burden to search SEQ ID NO:1-34 in the present application. Claims 10-13 and 19-22 of co-pending 11/509,979 are drawn to methods comprising SEQ ID NO:1-34. Thus, the U.S. Patent and Trademark Office has already searched SEQ ID NO:1-34 in the context of the methods in co-pending 11/509,979, methods the Patent Office maintains are not patentably distinct from the instant claims (as evidenced by the double patenting rejection). Thus, there is no burden what-so-ever to Patent Office to examine SEQ ID NO:1-34 in the present application. The rejoinder and examination of SEQ ID NO:1-34 is requested.

Obviousness-Type Double Patenting Rejection

Claims 1-6, 8, 12-15, 27, 28, and 33-38 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 10-13 and 19-22 of co-pending U.S. Patent Application Serial No. 11/509,979. Applicants request that this rejection be held in abeyance until the identification of otherwise allowable subject matter. At that time a Terminal Disclaimer in compliance with 37 CFR 1.321(c) and thereby obviating the double patenting rejection of pending claims 1-6, 8, 12-15, 27, 28, and 33-38, will be submitted.

The 35 U.S.C. §112, Second Paragraph, Rejection

The Examiner rejected claims 27, 28, and 33-38 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. This rejection is traversed. Claim 27 has been amended to clarify the claimed method; "[a] method for reducing β -amyloid induced apoptosis in a cell . . . wherein the compound reduces β -amyloid induced apoptosis in the cell." Claim 28 has been amended to clarify the claimed method; "[a] method for reducing retinoic acid induced apoptosis in a cell . . . wherein the compound inhibits retinoic acid induced apoptosis in the cell." Support for amended claims 27 and 28 is found, for example, on page 25, lines 19-30, pages 26, lines 15-31, Table 1, and Figure 6 of the specification. Applicants submit that the metes and bounds of claims 27, 28 and dependent claims 33-38 are clear. The reconsideration and withdrawal of the rejection of claims 27, 28, and 33-38 under 35 U.S.C. §112, second paragraph, is requested.

The 35 U.S.C. §102 Rejection

The Examiner rejected claims 27 and 33-35 under 35 U.S.C. §102(b) as being anticipated by Leszek et al. (*Archivum Immunologiae et Therapiae Experimentalis*, 1999;47:277-385). This rejection is traversed. Claim 27 has been amended to clarify the claimed method, "[a] method for reducing β -amyloid induced apoptosis in a cell . . . comprising:

determining an effective amount of a compound effective to reduce β -amyloid induced apoptosis in the cell . . . ;

contacting the cell with an effective amount of the compound; . . .

wherein the wherein the compound reduces β -amyloid induced apoptosis in the cell."

Applicants submit that Leszek et al. does not teach each and ever element of the method of claim 27, and thus, does not anticipate claim 27. In particular, Leszek et al. does not teach a step of

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"determining an effective amount of a compound effective to reduce β -amyloid induced apoptosis in the cell." The reconsideration and withdrawal of the rejection of claim 27 and 33-35 under 35 U.S.C. §102(b) as being anticipated by Leszek et al. is requested.

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Summary

It is respectfully submitted that the pending claims 1-6, 8, 12-15, 27, 28, and 33-38 are in condition for allowance and notification to that effect is respectfully requested. The Examiner is invited to contact Applicants' Representatives at the telephone number listed below if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted

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CERTIFICATE UNDER 37 CFR §1.8:

The undersigned hereby certifies that this paper is being transmitted via the U.S. Patent and Trademark Office electronic filing system in accordance with 37 CFR §1.6(a)(4) to the Patent and Trademark Office addressed to the Commissioner for Patents, Mail Stop Amendment, P.O. Box 1450, Alexandria, VA 22313-1450, on this 29th day of August, 2008.

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